

Rep. Sensenbrenner's H.R. 4437 vs. Sen. Specter's Plan

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
BILL TITLE	BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005	COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006
AMNESTY¹ PROVISIONS?	No	YES
WHAT TYPE² OF AMNESTY?	N/A	<p>REWARD AMNESTY—virtually all of the 10.2 million illegal aliens estimated to be in the United States as of January 1, 2004, would be rewarded with exactly what they broke U.S. law to obtain: permission to work in the United States indefinitely. A significant number of the estimated 1.2 million illegal aliens who have entered the United States since Jan. 1, 2004, along with some of those who enter in the future, also would likely be able to obtain amnesty through fraud. (Experts have found that the fraud rate in the 1986 amnesty was as high as 70 percent.)</p>
WHO WOULD QUALIFY FOR AMNESTY?	N/A	<p>Any illegal alien who:</p> <ul style="list-style-type: none"> • was employed in the United States on Jan. 4, 2004, and has been employed since then; • is admissible, except that the requirement that aliens coming to work are certified as needed by the Labor Department (DOL), most prior immigration and document violations, and the three-year/10-year bars on reentry do not apply, and certain other grounds of inadmissibility may be waived; • is not subject to a final order of removal, has not failed to depart after being granted voluntary departure, has complied with any DHS request for information, and has not been served a notice to appear; • applies within one year of enactment; • waives the right to appeal DHS's decision on his/her amnesty application or to contest any removal action other than by claiming asylum; • agrees to the release of any of the information on the application for law enforcement purposes; • can obtain a signed affidavit from his/her employer attesting to current

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
		<p>employment;</p> <ul style="list-style-type: none"> acknowledges in writing that he/she is unlawfully present and removable and provides DHS any social security number/card and any other false/fraudulent document the alien has; and can get his/her employer to pay a \$500 application fee. <p>Illegal aliens applying for amnesty <u>may</u> also be asked to undergo a medical exam and must establish that they have paid all income taxes owed for work prior to Jan. 4, 2004 (or have a payment agreement with the IRS).</p> <p>Spouses and children of amnestied aliens are to be granted amnesty, as well, but are not to be authorized to work in the United States and must submit an extra fee of \$100 per family member.</p>
ESTIMATED NUMBER OF ILLEGAL ALIENS³ WHO COULD QUALIFY FOR AMNESTY?	N/A	An estimated 6.7 million illegal aliens who were employed as of Jan. 1, 2004, plus an estimated 3.5 million non-working spouses and minor children could qualify for amnesty under the Specter plan.
LEGAL PROTECTIONS FOR AMNESTY APPLICANTS?	N/A	<p>“Conditional nonimmigrant” status may be terminated by DHS if DHS determines that the illegal alien was not eligible to begin with or if the illegal alien commits an act that makes him/her removable (other than those acts committed prior to application). Amnestied aliens who are unemployed for 45 days or more are ineligible to work in the United States again until they have left the country and reentered</p> <p>Amnesty applicants may not be detained, found inadmissible or deportable, or removed pending adjudication of the application unless the alien, through conduct or criminal conviction, becomes ineligible for amnesty.</p>
AMNESTY FOR EMPLOYERS OF ILLEGAL ALIENS?	N/A	The Specter proposal does not address this directly, though it certainly implies that employers would be pardoned for hiring illegal aliens, so long as those aliens came forward and applied for amnesty. By requiring amnesty applicants to provide an affidavit from their current employer, who must admit he/she is violating the law by hiring the alien,
FUNDING OF SERVICES FOR AMNESTIED ALIENS	N/A	<p>States and localities may deem amnestied aliens ineligible for public assistance. As nonimmigrants, amnestied aliens would be ineligible for most non-emergency federal public assistance.</p> <p>However, the Specter plan establishes grant programs to:</p> <ul style="list-style-type: none"> provide “such sums as may be necessary” in 2007 through 2009 for “non-profit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions” of the Specter plan; educate immigrant communities regarding the individuals and organizations that can provide authorized legal representation; educate interested entities regarding the requirements for obtaining nonprofit recognition and accreditation to represent immigrants; educate interested parties regarding the process for obtaining amnesty;

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
		<ul style="list-style-type: none"> provide “such sums as may be necessary to carry out the mission of the Office of Citizenship” within USCIS, including the establishment of a 501(c)(3) United States Citizenship and Immigration Foundation to support the functions of the Office of Citizenship within USCIS by accepting/soliciting charitable donations and making donations to the Office of Citizenship; and provide “such sums as may be necessary” to nonprofit organizations, including religious groups, to promote civics and English-as-a-second-language education.
GUEST WORKER PROVISIONS?	No	YES
MODIFIES EXISTING GUEST WORKER PROGRAM(S)?	N/A	<p>F Student Visas—Modifies the F nonimmigrant student visa to permit an alien to be issued an F visa in order to engage in temporary employment for optional practical training related to the alien’s area of study for up to 24 months.</p> <p>Adds an F-4 visa for aliens who have been accepted and plan to attend a graduate program in math, engineering, technology, or the physical sciences in order to obtain an advanced degree. Expands the circumstances under which an F visa holder may work off-campus in a position unrelated to the alien’s field of study.</p> <p>H-1B Visas—Adds 50,000 additional H-1B visas in the first fiscal year after enactment; exempts from the H-1B cap aliens who earn advanced degrees in science, technology, engineering, or math.</p> <p>Establishes a sliding cap on H-1B visas, so if the cap is hit in a given year, the cap for the following year goes up to 120 percent of the existing cap. If the cap is not reached, the cap does not change in the subsequent year.</p>
CREATES NEW GUEST WORKER PROGRAM(S)?	N/A	<p>Creates a new H-2C nonimmigrant category for aliens coming to the United States to perform temporary labor or services not covered by other nonimmigrant categories, if unemployed U.S. workers capable of performing the work cannot be found, along with the spouse and minor children of such aliens. This new category would go into effect one year after enactment and be available to any aliens then outside the United States. H-2C workers would be permitted to work in the United States for three years, and they would be allowed to apply for one three-year extension, for a total of six years, after which they must leave the country for at least one year.</p> <p>In order to qualify for an H-2C visa, an alien must:</p> <ul style="list-style-type: none"> establish that he/she has a job offer from an employer who has satisfied the requirements relating to petitions; pay a \$500 fee in addition to the normal visa processing fee; undergo, at his/her own expense, a medical exam; submit an application indicating physical and mental health, criminal history and gang membership, immigration history, involvement with terrorists; and

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
		<ul style="list-style-type: none"> certify that all information provided is true and may be released for law enforcement purposes. <p>DHS may waive prior immigration violations and it may waive certain other grounds of inadmissibility for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.</p> <p>No H-2C visa may be issued and no H-2C nonimmigrant may be admitted until all appropriate background checks have been completed.</p> <p>H-2C workers are prohibited from changing to another nonimmigrant status, but they are not prohibited from adjusting to lawful permanent residence.</p> <p>H-2C nonimmigrant status would terminate if the alien is unemployed for 45 or more consecutive days. H-2C workers would be allowed to change employers, as long as the new employer has satisfied the petition requirements.</p> <p>Aliens caught entering the United States illegally after the date of enactment, as well as aliens found to be unlawfully present after the date of enactment, would be ineligible for cancellation of removal and voluntary departure and they would be prohibited from obtaining any nonimmigrant status for 10 years.</p> <p>Spouses and children of H-2C workers would be permitted to accompany the principal alien if they are admissible, and if they pay an additional fee of \$500. Spouses and children may be required to submit to a medical exam, and they may not be admitted until all appropriate background checks are completed</p>
NUMERICAL LIMITS ON AFFECTED GUEST WORKER PROGRAM(S)?	N/A	<p>NONE</p> <p>Establishes a task force to study the impact of H-2C workers on US wages, working conditions and employment, and to make recommendations on whether an annual numerical limit is needed.</p>
PROTECTIONS FOR U.S. WORKERS (U.S. CITIZENS AND LEGAL RESIDENTS) FROM GUEST WORKER PROGRAMS?	N/A	<p>Employers of H-2C nonimmigrants must attest that employment of the worker will not adversely effect the wages and working conditions of US workers; that it did not and will not cause the separation from employment of a US worker within the 180-day period beginning 90 days before the date on which the petition is filed; and that the worker will be paid the greater of the actual wage paid to similarly situated workers or the prevailing wage.</p> <p>All workers at the place of employment must be provided the same working conditions and benefits. An H-2C worker may not be employed during a strike, lockout or work stoppage. If the worker's job is not covered by State workers' compensation law, the employer must provide insurance that is equivalent to workers' compensation law.</p> <p>Employers must provide notice of the filing of a petition for an H-2C worker to the bargaining representative or to the other employees.</p> <p>Unless the Labor Department has determined that there is a labor shortage in the occupation and area of intended employment, the employer must</p>

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
		<p>demonstrate good faith efforts to recruit US workers, including recruitment efforts from 90 days before the petition is filed to 14 days before the petition is filed, and the efforts must include the actual wage to be paid.</p> <p>Employers must make a copy of each petition available to the public, and provide a copy to the worker and the Labor Department. Employers must retain a copy for five years after the petition is filed.</p> <p>The employer must notify the Labor Department within three days if the H-2C worker is separated from his job.</p> <p>The Labor Department is authorized to audit any approved petition and may disqualify an employer who violates any provision from importing additional nonimmigrant workers for up to three years.</p> <p>DHS is required to establish an alien employment management system to track the employment of H-2C workers and provide employers an opportunity to recruit US workers before hiring an H-2C.</p> <p>The Labor Department is required to manage an electronic job registry, on which an employer petitioning for an H-2C worker must post the job announcement for at least 30 days</p>
WAGE REQUIREMENTS FOR GUEST WORKERS?	N/A	The greater of actual wages or prevailing wages, which, in a saturated labor market, will slide toward minimum wage.
PATH TO U.S. CITIZENSHIP FOR FUTURE GUEST WORKERS?	N/A	Not automatic, but H-2C workers can apply for adjustment to LPR status if they qualify.
CHANGES IN LEGAL, PERMANENT IMMIGRATION LEVELS?	No	YES
INCREASE DUE TO AMNESTY?	N/A	While the amnestied aliens would be permitted to live and work in the United States indefinitely, they would not be given a direct path to LPR status.
CHANGE IN FAMILY- BASED IMMIGRATION?	N/A	<p>Increases the cap on family-sponsored immigrant visas by 254,000 plus the difference between the number of such visas authorized to be issued since 2001, less the number actually issued since 2001.⁴</p> <p>Reallocates family-preference visas as follows:</p> <ul style="list-style-type: none"> • Unmarried sons and daughters of citizens = 10 percent of cap of 480,000; • Spouses and unmarried sons and daughters of LPRs = 50 percent (of which 77 percent must be issued to the spouses and minor children of LPRs) of cap of 480,000; • Married sons and daughters of citizens = 10 percent of cap of 480,000; and • Brothers and sisters of citizens = 30 percent of cap of 480,000.
CHANGE IN EMPLOYMENT-	N/A	An F-4 visa holder who successfully earns a doctorate degree in a listed field and is employed full time in the US in a job in the listed field is automatically

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
BASED IMMIGRATION?		<p>eligible for adjustment to lawful permanent resident status.</p> <p>Authorizes any F visa holder to apply to adjust to lawful permanent resident status if an immigrant visa is available.</p> <p>Permits immediate adjustment of status to lawful permanent residence of students of math, engineering and science if they submit a \$1,000 fee.</p> <p>Exempts from numerical limitations aliens who earn an advanced degree in science, technology, engineering or math and have been working in a related field in the United States under a nonimmigrant (e.g., H-1B) visa during the three-year period before they apply for an employment-based permanent visa.</p> <p>Exempts from numerical limitations aliens with extraordinary ability, outstanding professors and researchers, and physicians who agree to work in a location designated by HHS as having a shortage of health care professionals.</p> <p>Exempts from the employment-based visa cap the “immediate relatives” of all employment-based immigrants. (With regard to citizens, immediate relatives are defined as spouses, minor children and parents. However, there is no current category for the parents of LPRs, so it is unclear if the Specter proposal intends to include parents of LPRs in this new exempt category or not.)</p> <p>The above three exemptions are to apply to new and pending applications for employment-based visas.</p> <p>Grants blanket labor certification for aliens with advanced degrees in science, technology, engineering, and math from an accredited US university who are members of professions requiring such degrees.</p> <p>More than doubles the cap on employment-based visas to 290,000 from 140,000, and attempts the same slight of hand as is used to capture “unused” family-sponsored immigrant visas.⁴ Makes the exemption from the employment-based cap for family members of employment-based immigrants retroactive to October 1, 2004, so that tens of thousands more “unused” visas will be available.</p> <p>Reallocates employment-based visas as follows:</p> <ul style="list-style-type: none"> • Priority workers = 15 percent of cap of 290,000; • Professionals with advanced degrees or aliens of exceptional ability = 15 percent of cap of 290,000; • Skilled workers (i.e., those with two years’ experience or training) = 35 percent of cap of 290,000; • Investors = five percent of cap of 290,000; and • Unskilled workers = 30 percent of cap of 290,000. <p>Special Immigrants would be exempted from the numerical limits.</p>
CHANGE IN VISA LOTTERY?	Eliminates the Visa Lottery.	N/A
BORDER ENFORCEMENT	YES	YES

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
PROVISIONS?		
ADDITIONAL INSPECTORS?	Authorizes 250 additional inspectors each year from 2007 through 2010.	Authorizes 250 additional inspectors each year from 2007 through 2010.
FENCING?	Requires construction of 700 miles of double-layer fencing in populated border areas.	Requires a study of the need for fencing.
US VISIT IMPLEMENTATION?	Requires DHS within one year of enactment to provide Congress a timeline for full implementation of the entry and exit components of US VISIT at every port of entry, and for making interoperable all immigration screening systems operated by DHS. Also requires the collection and storage of 10 fingerprints from each alien processed through US VISIT, rather than the current two fingerprints.	Requires DHS within six months of enactment to provide Congress a timeline for full implementation of the entry and exit components of US VISIT at every port of entry, and for making interoperable all immigration screening systems operated by DHS.
INTERIOR ENFORCEMENT PROVISIONS?	YES	YES
MANDATORY WORK ELIGIBILITY VERIFICATION?	<p>Within two years of enactment, all employers must verify the work eligibility of new hires through the Basic Pilot.</p> <p>Within three years of enactment, all federal, state, and local government agencies, employers in federal, state, or local facilities, and critical infrastructure facilities must verify the work eligibility of all employees through the Basic Pilot.</p> <p>Within six years of enactment (but beginning on a voluntary basis two years after enactment), all employers must verify the work eligibility of all employees through the Basic Pilot.</p>	<p>Within six months of enactment, all employers designated by DHS as critical infrastructure facilities and those directly related to national security or homeland security must verify the work eligibility of all employees.</p> <p>DHS also may require any other employer or class of employers to verify the work eligibility of new hires within six months of enactment.</p> <p>Within two years of enactment, employers with more than 5,000 employees must verify the work eligibility of new hires.</p> <p>Within three years of enactment, employers with between 1,001 and 5,000 employees must verify the work eligibility of new hires.</p> <p>Within four years of enactment, employers with more than 250 employees must verify the work eligibility of new hires.</p> <p>Within five years of enactment, all employers must verify the work eligibility of new hires.</p> <p>At no point do employers have to go back and verify all employees, which means all employed illegal aliens will be grandfathered in, until they attempt to switch jobs.</p>
MANDATORY FEDERAL COOPERATION WITH STATE/LOCAL POLICE?	Requires DHS to produce and pay for a training manual and a pocket guide to instruct state and local law enforcement personnel in the investigation, identification, apprehension, arrest, detention, and transfer to federal custody of aliens. Establishes federal grants for states and localities that assist in the enforcement of immigration laws.	<p>NO</p> <p>Requires states to submit a written request to DHS to have aliens taken into federal custody.</p>
EXPANSION OF EXPEDITED REMOVAL?	<p>Directs DHS to use expedited removal for aliens from noncontiguous countries who are apprehended within 100 miles of the border and who entered illegally within 14 days of apprehension.</p> <p>Authorizes DHS to use expedited removal for aliens convicted of criminal offenses who entered illegally, have no asylum claim, and are ineligible for relief from removal.</p>	NO
ADDRESSES SANCTUARY	Eliminates SCAAP funding for any state or locality with a sanctuary policy	NO

	H.R. 4437—Rep. Sensenbrenner	S. ____—Sen. Specter
POLICIES?	in place two years after enactment.	
LOGISTICAL IMPOSSIBILITIES?	No	YES
IMPLEMENTATION OF AMNESTY	No	The proposal delegates responsibility for implementing the amnesty program to DHS, but USCIS is the component of DHS that will have to process all the applications and issue all the work permits. USCIS cannot effectively do its current job without significantly increasing U.S. vulnerability to terrorist attacks and predation by criminals. Despite this, the Specter plan would require USCIS to complete the processing of all applications for amnesty, including completion (to the satisfaction of the Secretary of DHS) of “all appropriate background checks,” within 18 months after enactment. That’s around 10 million applicants in addition to the six-seven million applications USCIS currently processes (or rubberstamps, in many cases). It is an absolute impossibility, unless the Specter plan were to be enacted at least five years from now, and those five years were spent thoroughly overhauling the immigration process, including the management structure, implementing regulations, and mind set, at USCIS. If the Specter plan were to pass this Congress, it is virtually guaranteed that the amnesty would become an open invitation for terrorists, criminals, and others who wish to harm the United States.
IMPLEMENTATION OF INCREASED LEGAL IMMIGRATION AND TEMPORARY WORKER PROGRAMS	No	Again, USCIS is the component of DHS that would bear the brunt of this increased workload. While the State Department would be responsible for issuing visas to applicants from abroad, USCIS still must process petitions from employers and relatives and issue all work permits. Even without the massive amnesty plan, it would be impossible for USCIS to handle this additional workload in a manner that protects homeland security.
OTHER PROVISIONS OF NOTE?		
OVERHAULING USCIS	Title XIII of H.R. 4437 would go a long way toward solving some of the problems that plague USCIS. By reintroducing a law enforcement perspective to this customer service focused agency, this title would ensure that national security issues are given the attention they deserve and are handled appropriately. Law enforcement personnel, specifically criminal investigators, also are sorely needed to target the widespread corruption within USCIS.	N/A

Please contact Rosemary Jenks, Director of Government Relations at NumbersUSA, at (202) 543-1341 if you have questions about this chart or the accuracy of anything in it.

1. This chart uses the Black’s Law Dictionary definition of amnesty: “a sovereign act of forgiveness for past acts, granted by a government to all persons (or a certain class of persons) who have been guilty of a crime or delict.”
2. NumbersUSA has identified six types of amnesties for illegal aliens:

- A. **EXIT AMNESTY:** The lawbreaker is forgiven the crime and not assessed the penalty. The Exit Amnesty waives one or more of the penalties the law currently assesses for illegal immigration, including civil and criminal penalties and bars on legal re-entry. An Exit Amnesty would, however, require illegal aliens to leave the United States.
- B. **REWARD AMNESTY:** The lawbreaker is actually rewarded for lawbreaking by being given the very thing he/she attempted to steal in the first place. In the case of illegal aliens, most are seeking a job in the United States. A Reward Amnesty would give illegal aliens the legal right to work, either temporarily or permanently.
- C. **INSTANT JACKPOT AMNESTY:** The lawbreaker wins the jackpot - he/she is instantly rewarded for breaking our immigration laws by being given lawful permanent resident status and put on the path to U.S. citizenship. Instant Jackpot Amnesties generally are limited to illegal aliens of a certain national origin (e.g., the Nicaraguan Adjustment and Central American Relief Act) or who are working in a particular occupation in the United States (e.g., the Special Agricultural Worker amnesty included in the Immigration Reform and Control Act).
- D. **MULTI-STEP JACKPOT AMNESTY:** The lawbreaker is first given a Reward Amnesty (usually through a legal work permit and temporary resident status or “cancellation of removal”). After a period of time and usually after other criteria (e.g., holding a job; paying taxes; working in a particular industry), the formerly illegal alien is given lawful permanent resident status and put on the path to U.S. citizenship.
- E. **BLANKET AMNESTY:** This is basically the Instant Jackpot Amnesty but for the entire population of illegal aliens (minus a few exceptions, such as certain criminals), although it may be limited to illegal aliens who have lived in the United States for a certain period. The “general amnesty” included in the 1986 Immigration Reform and Control Act, for example, was a Blanket Amnesty for all illegal aliens who had lived in the United States since January 1, 1982.
- F. **DE FACTO AMNESTY:** This does not immediately reward illegal aliens with legal status but holds out the promise that if they avoid arrest long enough they will be exempted from the penalties for illegal immigration and granted legal status. The now expired Section 245(i) of the Immigration and Nationality Act is a De-Facto Amnesty because it says that all illegal aliens in the country who have the right through jobs or relatives to apply for lawful permanent resident status may do so from within this country with the tacit assurance that they may remain in this country illegally until their name comes up to the top of the list for a green card sometime in the future.

³ Except as otherwise noted, all estimates are extrapolated from "Unauthorized Migrants: Numbers and Characteristics," by Jeffrey S. Passel of the Pew Hispanic Center, which found that the illegal-alien population was 10.3 million in March 2004. The study is available at: <http://pewhispanic.org/reports/report.php?ReportID=46>. The figures in this chart assume that the illegal-alien population in the United States has increased by a net 500,000 annually since the late 1990s, as estimated by DHS (http://uscis.gov/graphics/shared/aboutus/statistics/III_Report_1211.pdf), for a total population of 10.8 million in March 2005. The chart also assumes that the labor force participation rates and gender and age distribution figures provided in the Pew Hispanic Center study have remained constant since 2004.

⁴ This provision purports to capture “unused” family-sponsored immigrant visas. However, there is no such thing as “unused” family-sponsored visas since all such visas that are not issued in one year are allocated to the employment-based categories in the next year. The same is true for employment-based visas—any visas not used in one year are allocated to the family-sponsored categories in the following year. Thus, this provision is, in effect, adding new immigrant visas in a number that coincides with the number of immigrant visas reallocated to another category at the end of each of fiscal years 2001 through 2005.